

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.7958 OF 2006**

Anil Pundlik Abhave ... Petitioner

V/s.

M/s.Vidya Enterprises & Anr. ... Respondents

Mr.A.M. Joshi for Petitioner  
Mr.Jaydeep Deo for Respondent

CORAM: SMT.NISHITA MHATRE, J.

DATED: SEPTEMBER 17, 2007

**P.C.:**

. The petition challenges the order passed by the Commissioner for Workmen's Compensation on 17.7.2006 refusing to condone the delay in filing the application. The application was dismissed on two grounds, namely, (i) that a separate application for condoning the delay was not filed by the petitioner and (ii) that on merits the petitioner had not established any case for condoning the delay.

2. The submission of the learned Counsel for the petitioner is that the Commissioner was incorrect in dismissing the application on the ground that a separate application had not been filed. He contends that the provisions of section 5 of the Limitation Act are not applicable to an application filed u/s 10 of the Workmen's Compensation Act. Where the Limitation Act is

made applicable, the Workmen's Compensation Act specifically stipulates so, such as in the case of filing of appeals under section 30.

3. This submission of the learned Counsel is correct. No separate application is required when there is a delay in filing the claim for compensation u/s 10 of the Workmen's Compensation Act. The section does not provide for any separate application nor is any application required to be filed under the rules framed under the Act. Therefore, the finding of the Court on this issue is incorrect.

4. However, the claimant must provide sufficient reasons for delay in preferring the application before the Commissioner under the Workmen's Compensation Act. These reasons must be set out in the claim application itself. The reasons must be sufficient to satisfy the Commissioner that the delay should be condoned. In the present case, the Commissioner has found that the reasons shown by the petitioner in approaching the Court four years after the accident are not justifiable. The accident occurred in the year 1996. A notice of claim was served on the employer in 1998. The claim application has been filed in 2000. Thus, there has been a delay at every stage from the workman. The only reason given by the learned Counsel for the petitioner

in approaching the Commissioner late is that talks of settlement were in progress and that the workman had been continued in service upto 2000. These reasons in my view are not sufficient for condoning the delay. The employment or non employment with the employer in whose premises the accident occurred while on duty has no relevance to the compensation payable under the Workmen's Compensation Act. Assuming that because the employer had continued him in service the workman did not wish to raise the issue, there was no reason to issue a notice of claim in 1998. On the notice of claim being served on the employer, the petitioner ought to have filed the application immediately thereafter. However, he has chosen to sleep over his rights. It is only when the employer terminated his services that the Petitioner arose from his slumber and preferred the application. It is contended by the learned Advocate for the petitioner that the employer has admitted that negotiations were in progress. He relies on his statement made in the written statement and the evidence on record. However, the evidence does not lead to the inference sought to be placed by the learned advocate for the petitioner. Petition rejected.